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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/057,067
Filing Date: January 25, 2002
Appellant(s): SPERRY ET AL.

Thomas C. Lagaly
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 19, 2006 appealing from the Office action mailed July 18, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

6,410,119	De Luca et al.	6-2002
5,733,045	Jostler et al.	3-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

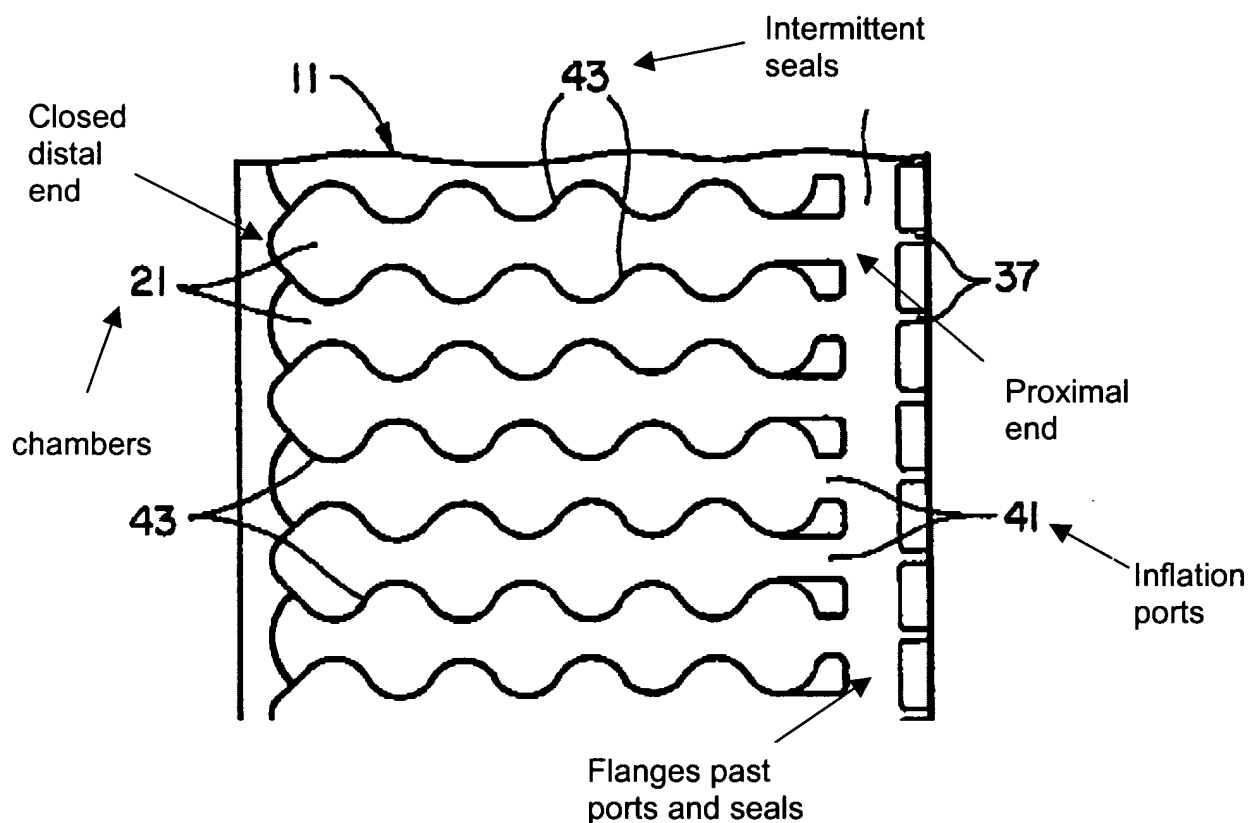
Claims 1-10 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over De Luca et al. (6,410,119) in view of Jostler et al. (5,733,045).

De Luca et al. discloses an inflatable web comprising two sheets (see col. 2, lines 47-51) having inner surfaces sealed to each other in a pattern defining a series of inflatable chambers (Fig. 2, #21) of predetermined length, each of the chambers (Fig. 2, #21) having at least one change in width over their length; an inflation port (Fig. 2, #41) located at a proximal end of each chamber, the inflation ports being formed by intermittent seals (Fig. 2, #43) between the sheets; and longitudinal flanges (see Figure shown below) formed by a portion of each of the sheets that extend beyond the inflation ports and intermittent seals. However, De Luca et al. fails to disclose the flanges having a pair of open, unsealed edges. Jostler et al. teaches that it is old and well known in the analogous art (packaging) to have a web including longitudinal flanges having a pair of open, unsealed edges (Fig. 1a, #24a,b; also see col. 2, lines 39-45) for the purpose of

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filling the pockets of the web with some material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the longitudinal flanges of the inflatable web in De Luca et al. to have a pair of open, unsealed edges as suggested by Jostler et al. in order to inflate the chambers by way of another method.

Regarding claim 2, note in De Luca et al. the chambers (Fig. 1, #23) comprise at least two inflatable sections of relatively large width connected by relatively narrow inflatable passageways (Fig. 1, #25). Regarding claim 3, note in De Luca et al. the inflation ports (Fig. 1, #41) are narrower in width than the inflatable sections of relatively large width (Fig. 1, #21). Regarding claim 4, note in De Luca et al. each of the sheets comprises a heat-sealable thermoplastic polymer on its inner surface (see col. 7, lines 3-5). Regarding claim 5, note in De Luca et al. the sections of relatively large width are circular (Fig. 1, #21) and capable of forming essentially spherical or hemispherical bubbles when inflated. Regarding claim 6, note in De Luca et al. the pattern defining the inflatable chambers form uninflatable planar regions (Fig. 1, #43) between the inflatable chambers (Fig. 1, #21). Regarding claim 7, note in De Luca et al. the flanges inherently have a width of at least $\frac{1}{4}$ inch (see Figure shown below). Regarding claim 8, the flanges in De Luca et al. are substantially equal in width (see Figure shown below). Regarding claim 9, note in De Luca et al. each of the inflatable chambers (Fig. 1, #21) has a closed distal end opposite from the proximal end of each chamber (see Figure shown below). Regarding claim 10, note in De Luca et al. the inflation ports comprise inner surfaces that are heat sealable to one another (see col. 8, lines 65-67 and col. 9, lines 1-4). Regarding claim 33, note in De Luca et al. one or more lines of weakness (see col. 5, lines 26-28) that allow sections of the web to be removed.



(10) Response to Argument

Firstly, Appellant argues “Jostler provides absolutely no teaching or suggestion of inflatable webs as disclosed in De Luca. More specifically, Jostler does not teach or suggest that pockets 26 are inflated with air to make inflatable cushioning material for protecting objects packaged within a shipping container as taught in De Luca. Instead, Jostler teaches that pockets 26 are filled with material, such that the pockets themselves form the package. The inflated webs

of De Luca, in contrast, are placed alongside the material to be packaged to protect such material within the package, but do not form the package itself as in Jostler. On this basis alone, it is clear the Jostler does not supply the requisite motivation to combine its teaching with that of De Luca in the manner suggested by the Examiner". Furthermore, Appellant argues "Jostler provides no suggestion whatsoever that the described web could be inflated for cushioning purposes.

Moreover, when read as a whole, Jostler's disclosure clearly indicates that the described web would be unsuitable as an inflatable web for cushioning applications, which is required by De Luca. Thus, far from suggesting the use of open edges in an inflatable web such as De Luca's, Jostler would have dis-incentivized one of ordinary skill in the art to apply any aspect of its teaching to inflatable web technology, such as that which is disclosed in De Luca".

However, it is to be pointed out that Jostler and De Luca each teach a packaging material and therefore are recognized as art equivalents. De Luca clearly teaches an inflatable web having two sheets (see col. 2, lines 47-51) having inner surfaces sealed to each other in a pattern defining a series of inflatable chambers (Fig. 2, #21) of predetermined length, each of the chambers (Fig. 2, #21) having at least one change in width over their length and an inflation port (Fig. 2, #41) located at a proximal end of each chamber, the inflation ports being formed by intermittent seals (Fig. 2, #43) between the sheets, and longitudinal flanges (Fig. 2, #31) formed by a portion of each of the sheets that extend beyond the inflation ports and intermittent seals as claimed in the present invention. Jostler was merely cited for suggesting that it is old and well known in the art to have the longitudinal flanges of a web for packaging having a pair of open, unsealed edges (Fig. 1a, #24a,b and see col. 2, lines 39-45) for the purpose of filling the pockets with a material. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time the applicant's invention was made to have modified the longitudinal flanges of the inflatable web in De Luca to have a pair of open, unsealed edges as suggested by Jostler in order to inflate the chambers. Due to the fact that De Luca and Jostler each teach a packaging material, one skilled in the art would clearly be able to modify the longitudinal flanges of the inflatable web in De Luca to have a pair of open, unsealed edges as suggested by Jostler in order to provide an alternative way to inflate the chambers, if so desired. Furthermore, the prior art as a whole suggested the desirability of the combination of the inflatable web limitations claimed, thus providing a motivation to combine, which need not be supported by a finding that the prior art suggested that the combination claimed by the applicant was the preferred, or most desirable combination over the other alternatives.

Secondly, Appellant argues "the combined teachings of the De Luca and Jostler references alone, i.e., without being viewed through the prism of Appellants' application, would have provided the skilled artisan with no expectation whatsoever that De Luca as modified by Jostler would be successful". Furthermore, Appellant argues "the Examiner focuses only on the open, initially unsealed edges of Jostler without fully considering the context in which such edges are disclosed, namely, in a web designed specifically to allow material to be poured from above into the pockets thereof, but not as an inflatable web that may be inflated for cushioning applications, as required by De Luca. Thus, a skilled artisan would not have looked to Jostler for information pertaining to the modification of an inflatable web, such as De Luca's. The Examiner's myopic focus on only the open edges of Jostler also ignores the fact that the proposed modification of De Luca based on Jostler would render the De Luca web unsatisfactory

for its intended purpose, would radically change De Luca's principle of operation, and would render the De Luca invention inoperable".

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Again, it is to be pointed out that De Luca and Jostler each teach a packaging material. De Luca clearly teaches an inflatable web having two sheets (see col. 2, lines 47-51) having inner surfaces sealed to each other in a pattern defining a series of inflatable chambers (Fig. 2, #21) of predetermined length, each of the chambers (Fig. 2, #21) having at least one change in width over their length and an inflation port (Fig. 2, #41) located at a proximal end of each chamber, the inflation ports being formed by intermittent seals (Fig. 2, #43) between the sheets, and longitudinal flanges (Fig. 2, #31) formed by a portion of each of the sheets that extend beyond the inflation ports and intermittent seals as claimed in the present invention. Jostler teaches that it is old and well known in the art to have a web for packaging provided with longitudinal flanges having a pair of open, unsealed edges in order to fill the pockets of the web with a material. Therefore, since both De Luca and Jostler each teach a web for packaging provided with chambers/pockets that are to be filled, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the longitudinal flanges of the inflatable web in De Luca to have a pair of open, unsealed edges as

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suggested by Jostler in order to inflate or fill the chambers by way of another method. Again, since both De Luca and Jostler each teach a web for packaging use, one skilled in the art would clearly be able to modify the longitudinal flanges of the inflatable web in De Luca to have a pair of open, unsealed edges as suggested by Jostler in order to fill or inflate the chambers of the web by way of another method, if so desired. Thus, the claims fail to patentably define over the prior art as applied above.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Catherine A. Simone 

March 17, 2006


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

Conferees:

Harold Pyon 

Pat Ryan 